

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION**

UNITED STATES OF AMERICA

PLAINTIFF

v.

Case No.: 4:19-cr-00450-LPR

JONATHAN MCKEMIE

DEFENDANT

ORDER

Defendant Jonathan McKemie has moved to reopen this case.¹ For the following reasons, Mr. McKemie's Motion to Reopen is DENIED.

On July 23, 2021, Mr. McKemie moved to vacate, set aside, or correct his 180-month sentence pursuant to 28 U.S.C. § 2255.² On August 23, 2021, the Government responded to Mr. McKemie's § 2255 Motion.³ On the same day, the Court entered a Text Order referencing the Government's Response and asking for the "J&Cs" (Judgment and Convictions) referenced in the Response.⁴ The Clerk of the Court immediately mailed a copy of this Order to the parties, and Mr. McKemie acknowledged receipt of the Order.⁵ On August 23, 2021, the Government provided the Court with the J&Cs. Over two months later, on November 8, 2021, the Court issued its ruling denying the Petition.⁶

Mr. McKemie now (November 19, 2021) says that he never received a copy of the Government's Response and was therefore never afforded an opportunity to reply.⁷ But in the

¹ Def.'s Mot. to Reopen (Doc. 46).

² Def.'s Mot. to Set Aside Sentence (Doc. 39); *see also* Br. in Supp. of Mot. to Set Aside Sentence (Doc. 40).

³ Gov.'s Resp. to Def.'s Mot. to Set Aside (Doc. 41).

⁴ Aug. 8, 2021 Text Order (Doc. 42).

⁵ Def.'s Mot. to Reopen (Doc. 46) at 1.

⁶ Nov. 11, 2021 Text Order (Doc. 44).

⁷ *Id.* at 2.

two-and-a-half months between August 23, 2021, and the Court's final decision in this matter (November 8, 2021), Mr. McKemie never suggested that the Government failed to send him its Response. This is true even though the Court's August 23, 2021 Order specifically referenced the fact that the Government had filed a response. So Mr. McKemie would have known by late August that the Government had filed its Response. Mr. McKemie's failure to timely raise his current allegation—that he never received a response—suggests either that he did in fact timely receive the Response or that he waived the omission by sitting on his rights.

In any event, it's clear that Mr. McKemie cannot prevail on his § 2255 Motion. There's no reason to reopen the proceedings here. Out of an abundance of caution, however, the Court will accept a reply from Mr. McKemie so long as it is filed within 30 days of this Order. If anything in that reply changes the Court's mind, the Court will then issue an order to reopen the proceedings.

Conclusion

Mr. McKemie's Motion to Reopen is DENIED.

IT IS SO ORDERED this 7th day of December 2021.

A handwritten signature in black ink, appearing to read 'Lee P. Rudofsky', with a long horizontal line extending to the right.

LEE P. RUDOFSKY
UNITED STATES DISTRICT JUDGE